

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re:

NEAL D. HARRINGTON fdba ALLSTATE
INSURANCE, WEEKIRK DEVELOPMENTS
and ABBIE SL JOSEPH-HARRINGTON fdba
A LITTLE BIT OF HEAVEN.

Debtors.

Case No. C06-5100FDB

ORDER VACATING EARLIER
ORDER AND SETTING BRIEFING
SCHEDULE

The Secretary of Veterans' Affairs, through its counsel, David B. Schumacher, moves for an order pursuant to Fed. R. Civ. P. 60(b) setting aside the Court's Order of Dismissal entered October 17, 2006. The dismissal was entered because it appeared from the docket that a briefing schedule had been entered on May 18, 2006, a schedule set forth by the Bankruptcy Clerk when entering the Certificate of Bankruptcy Record on Appeal. [Dkt. # 5] Under that schedule, the opening brief was due June 27, 2006, the response brief was due July 27, 2006, and the reply brief was due by August 10, 2006. On May 18, 2006, the date of the Bankruptcy Clerk's Certification of the Record on appeal, the District Court Clerk entered a notice on the docket (unnumbered) that the Bankruptcy Appeal was ready for consideration on August 11, 2006, the day after the final brief was to have been filed. Notice of that entry was sent to counsel of record. There was no activity in this case – evidently not even an inquiry – until the Court entered its Dismissal on October 17, 2006.

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1 Since Counsel for Appellant Veterans' Affairs has filed a motion to set aside the dismissal,
2 the Court has made inquiries with the Bankruptcy Clerk's Office and has learned that while the
3 pleadings associated with Docket entry No. 5 were mailed in hard copy to the non-electronic filers,
4 the Certificate screen for Docket entry No. 5 showing the briefing schedule was not mailed to
5 counsel in hard copy. It is not clear why Mr. Schumacher, who, according to the Bankruptcy
6 Clerk's Office, receives electronic notices from that Court, was not aware of the briefing schedule.
7 Nevertheless, owing to the confusion over receipt of notice of the briefing schedule, the Court will
8 set aside its Order of Dismissal entered on October 17, 2006 and will set a new briefing schedule.

9 NOW, THEREFORE, IT IS ORDERED:

10 1. Motion of Secretary of Veterans' Affairs to Set Aside Order of Dismissal [Dkt. # 7] is
11 GRANTED, and the Court's Order entered October 17, 2006 [Dkt. # 6] is VACATED;

12 2. The following briefing schedule is set:

13 • Appellant's Brief due December 29, 2006;
14 • Appellee's Response due January 29, 2007;
15 • Appellant's Reply due February 12, 2007.

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17 DATED this 27th day of November, 2006.

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19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
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